

## Internal Revenue Service

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Washington, DC 20224

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### LEGEND:

Taxpayer =  
Date 1 =  
Old Parent =

Dear :

This letter responds to your letter dated December 3, 2007, requesting a ruling under § 162(m) of the Internal Revenue Code (the Code).

Taxpayer is a publicly-held corporation and a member of an affiliated group. On Date 1, the affiliated group underwent a series of transactions in order to divide its business interests into two separate publicly-held corporations. These transactions were described in a private letter ruling issued September 12, 2007. As part of this reorganization, Old Parent, the original parent of the affiliated group, created a holding company subsidiary. Taxpayer and another corporation were created as subsidiaries of that holding company. At the conclusion of the reorganization, the former shareholders of Old Parent owned Taxpayer. They also owned 100 percent of the stock of one of Old Parent's subsidiaries.

In the course of the reorganization, Old Parent transferred a number of benefit arrangements to Taxpayer, including compensation arrangements that were previously disclosed to and subsequently approved by shareholders of Old Parent for purposes of § 162(m) of the Code (the Approved Plans). The Approved Plans have not been re-approved since being transferred to Taxpayer. Taxpayer requests a ruling that the Approved Plans continue to meet the shareholder approval requirements of § 162(m), except to the extent future approval is required by § 1.162-27(e)(4)(vi) of the Income Tax Regulations (the regulations).

Section 162(m) of the Code generally provides a limit of \$1 million on the deduction for “applicable employee remuneration” paid during any taxable year for the chief executive officer and the other four highest compensated officers of any publicly held corporation.

Section 162(m)(4)(C) of the Code excepts from this limitation “performance-based compensation” that, in relevant part, is payable solely on account of attaining one or more performance goals determined by a compensation committee of the board of directors that is comprised solely of two or more outside directors and if the material terms under which the remuneration is to be paid are approved by a majority of the shareholders.

Section 1.162-27(e)(2) of the Income Tax Regulations provides that qualified performance-based compensation must be based solely on account of the attainment of one or more preestablished, objective performance goals. A performance goal is considered preestablished if it is established in writing by the compensation committee not later than 90 days after the commencement of the period of service to which the performance goal relates, provided that the outcome is substantially uncertain at the time the compensation committee establishes the goal. However, in no event will a performance goal be considered to be preestablished if it is established after 25 percent of the period of service (as scheduled in good faith at the time the goal is established) has elapsed.

Section 1.162-27(e)(4)(i) of the regulations provides that the material terms of the performance goal under which the compensation is to be paid must be disclosed to and subsequently approved by the shareholders of the publicly held corporation before the compensation is paid. This requirement is not satisfied if the compensation would be paid regardless of whether the material terms are approved by shareholders. “Material terms” include (i) the employees eligible to receive compensation; (ii) a description of the business criteria on which the performance goal is based; and (iii) either the maximum amount of compensation that could be paid to any employee or the formula used to calculate the amount of compensation to be paid to the employee if the performance goal is attained.

Section 1.162-27(e)(4)(vi) of the regulations provides that once the material terms of a performance goal are disclosed to and approved by the shareholders, no additional disclosure or approval is required unless the compensation committee changes the material terms of the performance goal. If, however, the compensation committee has authority to change targets under a performance goal after shareholder approval of the goal, material terms of the performance goal must be disclosed and reapproved by shareholders no later than the first shareholder meeting that occurs in the fifth year following the year in which shareholders previously approved the performance goal.

Based on the information submitted and Taxpayer's representations referred to above, we rule that, following the reorganization that occurred on Date 1, the Approved Plans continue to meet the shareholder approval requirement set forth in § 1.162-27(e)(4)(i) of the regulations, except to the extent future shareholder approval is required by § 1.162-27(e)(4).

Except as specifically ruled on above, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent. Taxpayer should attach a copy of this ruling to any income tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely yours,

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KENNETH M. GRIFFIN  
Senior Technician Reviewer  
Executive Compensation Branch  
Office of Division Counsel/Associate  
Chief Counsel (Tax Exempt and  
Government Entities)